Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	IB Docket No. 95-91
	)	GEN Docket No. 90-357
Establishment of Rules and Policies	)	RM No. 8610
for the Digital Audio Radio Satellite	)	PP-24
Service in the 2310-2360 MHz	)	PP-86
Frequency Band	)	PP-87

COMMENTS OF CRACKER BARREL OLD COUNTRY STORE, INC.

CRACKER BARREL OLD COUNTRY STORE, INC.

William B. Garrison, Jr.
John G. Williams
Linda C. Kalver
Telecommunications Consulting Group, Inc.
1201 Pennsylvania Avenue, N.W.
Suite 500
Washington, D.C. 20004

Walter L. Morgan
Communications Center
2723 Green Valley Road
Clarksburg, MD 20871-8599

Anthony S. Harrington
Joel S. Winnik
K. Michele Walters

HOGAN & HARTSON L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Its Attorneys

Dated: September 15, 1995

TABLE OF CONTENTS

TABLE OF CONTENTS

SUMMARY

This rulemaking addresses an important new service -- the first new wireless outlet for audio information and entertainment since the Commission's licensing of FM radio. If satellite radio is to reach full potential, then the Commission's policies and rules should maximize competition in the new service. DARS should not be dominated by an oligopoly, when technology and creative policymaking can open the field to additional entrants, ensuring true competition and greater program diversity.

Cracker Barrel is a retail and restaurant chain with 225 stores along our nation's interstate highway system. Cracker Barrel is expert in identifying and meeting the needs of the traveling public. The incumbent radio broadcasting industry does not address that subsector's needs through current program or information services. Cracker Barrel is interested in constructing and operating a DARS satellite to provide important, specialized services to automobile travelers. In particular, a DARS system could be designed to provide information to subscribers targeted to specific locations along our nation's highways.

Cracker Barrel's proposal is one creative approach to satellite radio service. But it is surely not the only innovative proposal for DARS that American enterprise can generate. The Commission should create an environment in which the benefits of that initiative can be realized. This requires that competition among DARS satellite operators be maximized. In these Comments, Cracker Barrel will show that using state-of-the-art transmission technologies that were not practically

available at the time the four pending DARS applications were filed as many as five years ago (based on technology developed in the prior decade), at least 15 providers can be licensed in this service with viable, multi-channel systems. Multiple licensing of such satellites will permit even greater competition.

The best uses of this limited spectrum may be lost if it is simply divided up among the four applicants who filed years ago. New ideas for DARS are developing. New technologies are available. The Commission can and should open the field to new applicants.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	IB Docket No. 95-91
	)	GEN Docket No. 90-357
Establishment of Rules and Policies	)	RM No. 8610
for the Digital Audio Radio Satellite	)	PP-24
Service in the 2310-2360 MHz	)	PP-86
Frequency Band	)	PP-87

COMMENTS OF CRACKER BARREL OLD COUNTRY STORE, INC.

Cracker Barrel Old Country Store, Inc. ("Cracker Barrel"), by its attorneys, submits its Comments in response to the Notice of Proposed Rulemaking ("NPRM") in the captioned proceeding. 1/ In the NPRM, the Federal Communications Commission ("Commission") seeks comments on the rules and

---

1/ Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, FCC 95-229, IB Docket No. 95-91, GEN Docket No. 90-357, RM No. 8610, PP-24, PP-86, PP-87 (released June 15, 1995) (hereinafter "NPRM"). Concurrently with these Comments, Cracker Barrel is filing an Application for Review of the International Bureau's grant of a § 319(d) waiver to Satellite CD Radio, Inc. Satellite CD Radio, Inc. Requests for Section 319(d) Waiver, DA 95-1908, File Nos. 8-DSS-MISC-91(2), 47-DSS-MISC-93 (released September 5, 1995). In the Application for Review, Cracker Barrel demonstrates that the waiver effectively forecloses technical and procedural options under consideration in this proceeding.

policies that should apply to satellite-delivered Digital Audio Radio Service ("DARS"). 2/

I. INTRODUCTION

This rulemaking addresses an important new service -- the first new wireless outlet for audio information and entertainment since the Commission's licensing of FM radio. If satellite radio is to reach full potential, then the Commission's policies and rules should maximize competition in the new service. DARS should not be dominated by an oligopoly, when technology and creative policymaking can open the field to additional entrants, ensuring true competition and greater program diversity.

Cracker Barrel is a retail and restaurant chain with 225 stores along our nation's interstate highway system. Cracker Barrel, which is based in Lebanon, Tennessee, was founded in 1969 and is one of the fastest growing companies in its field. Cracker Barrel's fiscal 1994-95 revenues were approximately $783 million. In fact, Cracker Barrel's business is broader than simply retail sales

---

2/ In particular, the Commission requests comments on how many licenses should be granted; how much spectrum each licensee should receive; what process should be used to resolve potentially mutually exclusive applications; what special considerations, if any, should be given to applications already pending before the Commission; whether licensees should be classified as broadcasters, common carriers, or non-common carriers; whether licensees should be permitted to provide ancillary services; whether DARS will affect radio broadcasting; and what technical rules should apply to this new service.

and food service: Cracker Barrel is expert in identifying and meeting the needs of the traveling public. Cracker Barrel is interested in constructing and operating a DARS satellite to provide important, specialized services to automobile travelers.

Cracker Barrel's service is intended to address the needs and interests of a specific subsector of the U.S. listening public -- interstate motorists. That subsector is large, dispersed, mobile and economically important. However, the incumbent radio broadcasting industry does not address that subsector's needs through current program or information services. In the current radio marketplace, these consumers are, in fact, invisible.

Cracker Barrel intends to place special emphasis on the information aspect of its satellite radio service. In particular, a DARS system could be designed to provide information to subscribers targeted to specific locations along our nation's highways. For example, this might consist of up-to-the minute news about traffic and weather conditions, as well as guides to lodging, restaurants and stores within close reach of each individual traveler. At the option of the subscriber, the radio receiver for such a system would either display information alphanumerically or provide it by voice synthesis.

Cracker Barrel's proposal is one creative approach to satellite radio service. But it is surely not the only innovative proposal for DARS that American enterprise can generate. The Commission should create an environment in which the benefits of that initiative can be realized. This requires that competition among DARS satellite operators be maximized. The previous application filing window should be reopened. And the potential number of licensees and programming

channels should be substantially increased through the standardized use of spectrum-sharing transmission technology and other progressive policies. In these Comments, Cracker Barrel will show that using state-of-the-art transmission technologies that were not practically available at the time the four pending DARS applications were filed as many as five years ago (based on technology developed in the prior decade), at least 15 providers can be licensed in this service with viable, multi-channel systems. Multiple licensing of such satellites will permit even greater competition. The best uses of this limited spectrum may be lost if it is simply divided up among the four applicants who filed years ago. New ideas for DARS are developing. New technologies are available. The Commission can and should open the field to new applicants.

II. THE COMMISSION SHOULD ACCEPT ADDITIONAL DARS APPLICATIONS AND ADOPT LICENSING POLICIES THAT MAXIMIZE COMPETITION

The Commission is now faced with an unusual situation. Only four applications are on file pursuant to a cut-off established nearly three years ago for a service that is first being defined in this very proceeding. Under these circumstances, the Commission cannot be assured that it has received all of the best proposals if additional applications are now not accepted. Compounding this problem, the public will not be assured that it has all of the best choices if licensing is limited to the four current applicants. Commission policy today always favors competition, recognizing that it yields innovation, efficiencies and lower costs. The result is better service for a public demanding quality communications choices.

A. The Commission Should Accept Additional DARS Applications

As the Commission noted in the NPRM, its normal process in the satellite field is to establish cut-off dates from time to time for the filing of applications. 3/ The Commission employed this routine procedure when the first applications for a satellite license to provide a digital radio service were filed beginning in 1990. But these applications were hardly routine, as they proposed the creation of an entirely new type of service. The NPRM recognizes that the Commission generally does not even accept applications for a proposed new type of service until after it has allocated spectrum and established licensing and service rules. 4/ For example, in broadband and narrowband PCS and in Interactive Video and Data Service, the Commission first defined those services and allocated frequencies before entertaining applications. 5/ In the case of DARS, the cart has been placed before the horse.

The Commission offers three options for dealing with this odd situation: 1) not accept any new applications and divide the band equally and exclusively among the current applicants; 2) set aside most of the band exclusively

---

3/ NPRM ¶¶ 34, 35.

4/ NPRM ¶ 35.

5/ See New Personal Communications Services, GEN Docket No. 90-314, 8 FCC Rcd 7700 (1993), recon. 9 FCC Rcd 4957 (1994) (broadband PCS); ET Docket No. 92-100, 8 FCC Rcd 7162 (1993), recon. 9 FCC Rcd 1309 (1994) (narrowband PCS); Interactive Video and Data Services, GEN Docket No. 91-2, 7 FCC Rcd 1630, recon. 7 FCC Rcd. 4923 (1992).

for the current applicants and establish a new filing window for the remainder; and 3) reopen the old filing window. 6/ Two considerations color the Commission's analysis of these options -- "certain equities" to which the existing applicants are supposedly entitled and a desire to avoid mutual exclusivity.

We know of nothing in the law that establishes any concept of expectation, reliance or compensation for delay in these circumstances. In particular, nothing requires the Commission to set aside any spectrum for the original applicants or prevents the Commission from reopening the cut-off period. To focus arbitrarily on the needs of pending applicants and on a goal of avoiding mutual exclusivity overlooks the Commission's statutory obligations.

The Commission should not concentrate on mechanistic solutions, nor on any perceived "equities" of early applicants, but on its mandate -- the public interest. Applying that standard, the Commission should first define DARS rules and policies, including the key question of how many competitors can be authorized. Past policy suggests that the Commission will conclude in this proceeding that it should authorize the maximum possible number of competitors. As shown below, through the use of a spectrum-efficient transmission technology, multiple licensing of individual space stations and the Commission's traditional financial qualifications standard, additional applications can be accepted, mutual exclusivity is likely to be avoided and a substantial number of operators can be licensed.

6/ NPRM ¶ 33.

The NPRM appears to recognize that the process applied to DARS got out of order. The only way the Commission can remedy this problem is by reopening the application window.

B. The Commission Should Maximize DARS Competition

The Commission should make every effort to maximize competition in this important new service. Four licensees serving our entire nation are simply not enough to ensure true competition and all of the public benefits known to flow from competition -- lower prices, efficiency, innovation and program diversity. As shown below, licensing only the four current applicants would potentially give each a huge number of channels if they employ a spectrum-efficient transmission technology.

The Commission cannot rely on traditional radio to act as a competitive check. As we will demonstrate below in Section V, the DARS service proposed by Cracker Barrel does not directly compete with local radio. But even to the extent these services may overlap, the local radio alternative would not restrain these four oligopolists. An analogy can be drawn to cable television where the Commission originally believed that the public's ability to choose over-the-air programming instead of cable would hold down cable rates and keep operators efficient. Congress ultimately determined that the two media were not competitive in a way that would restrain pricing and promote efficiency of cable services.

In the wireless telephone field, the Commission originally licensed only two operators per service area, primarily because of perceived spectrum limitations. To increase price competition and innovation, and to meet burgeoning

demand, the Commission is now in the process of licensing as many as six additional operators. Like cable television and wireless telephony, DARS is a wave of the future. If the Commission can structure its rules and policies in this service to include a larger number of licensees, it should. We show below how this can be done.

III. THE COMMISSION CAN MAXIMIZE DARS COMPETITION

A. The Standardized Use Of CDMA Will Permit Licensing Of A Substantial Number Of Operators

Three of the current applicants emphasize their intention to use the transmission technology known as Time Division Multiplex ("TDM"). Code Division Multiple Access ("CDMA"), an advanced technology previously limited largely to military applications, is increasingly moving into commercial use because it offers a far greater potential for frequency sharing than TDM. 7/ Thus, the standardized use of CDMA will permit the transmission of more information within a given amount of spectrum. 8/ Because the spectrum allocated for DARS is limited, the

---

7/ In the personal communications field, for example, two of the largest licensees, PrimeCo and WirelessCo, have announced their intention to employ CDMA. CDMA is used in GPS, four out of five of the "Big LEO" systems and other commercial applications.

8/ In its Application, Digital Satellite Broadcasting Corporation also notes the advantages of the standardized use of CDMA. See Application of Digital Satellite Broadcasting Corporation For Authority to Construct Two Satellites and to Launch and Operate One Satellite of 101° West Longitude in the Digital Audio Radio Service, File Nos. 12 and 13-DSS-P-93, 28-DSS-LA-93, filed December 15, 1992.

choice of transmission technology is critical. The use of CDMA, as opposed to TDM, will permit the transmission of far more information, which translates into many more simultaneous radio channels and many more competing licensees.

One of the essential issues raised in the NPRM is how many licensees can be accommodated in the DARS spectrum. 9/ Cracker Barrel engaged the Communications Center, a satellite engineering consulting firm well known to the Commission, to assess practical channel availability within the band. Knowing how many channels are available will allow the Commission to make an informed decision about how many competitors should be authorized (taking into account how many channels each licensee needs to be economically viable).

As shown in Figure 1, approximately 465 compact disc-quality, 128 kbps channels can be accommodated in the 50 MHz allocated to DARS. 10/ If only half of the capacity is used for 232 compact-disc quality channels, then 465 FM stereo-quality channels (at 64 kbps) could be transmitted over the rest of the DARS spectrum. Or, about 1,000 FM mono-quality (at 32 kbps) channels could be provided over this remaining capacity. Alternatively, the same remaining capacity could provide over 3,000 9.6 kbps voice/data channels. As indicated in the current

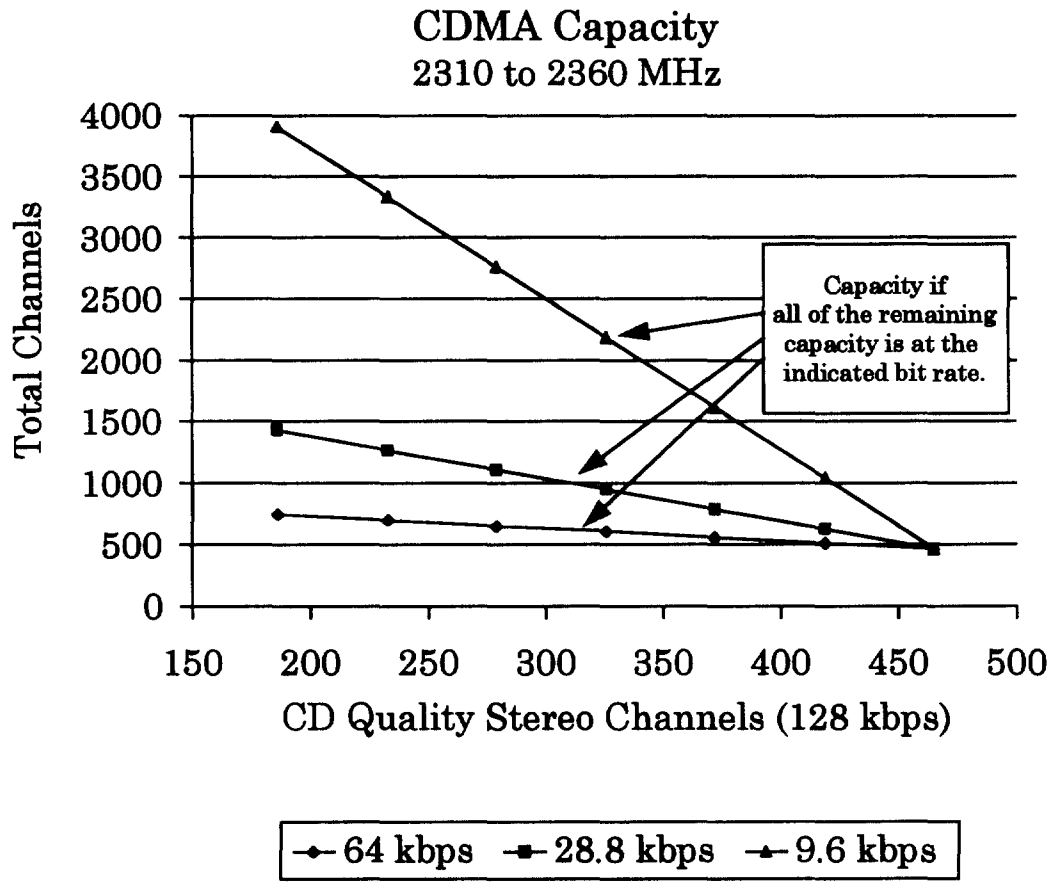
---

9/ NPRM ¶¶ 31, 32, 40.

10/ This result reflects the use of a CONUS footprint with ten regional beams, applying procedures used for CDMA transmission in the MSS Negotiated Rulemaking. Report of the MSS Above 1 GHz Negotiated Rulemaking Committee (April 6, 1993).

applications, in the best case, TDM would only permit 150 to 270 compact disc-quality channels in the allocated spectrum. 11/ It is obvious that, with the standardized use of CDMA across the band, a much larger number of simultaneous programs and other services can be accommodated.

Figure 1



11/ The difference depends on the ability to use one or both polarizations at 30 channels per MHz. The CDMA calculations assume two reuses or a single polarization, thus they may be conservative.

Assuming, as do the current applicants, that an economically viable DARS service requires approximately 30 channels, there is room within this bandwidth for as many as 15 separate CDMA-based competitors. This also reveals a startling fact: If the Commission were to divide up the band among the current applicants (one option offered in the NPRM), each one of them by simply turning to CDMA would be given 150-270 compact disc-quality channels. Obviously, this is five to nine times as many channels as each applicant says it needs and would deny the public the benefits of five to nine times as much competition.

B. Multiple Licensing Of Individual Space Stations Will Increase Efficiency

Increased efficiency will be permitted if the Commission permits multiple licensing of individual space stations. Thus, assuming each of seven space stations is designed to transmit over 7 MHz, each satellite encompassing about 60 compact-disc quality channels using CDMA, two licensees with 30 compact-disc quality channels each can share a satellite. This arrangement would reduce the costs -- and risks -- incurred by each licensee. Because DARS equipment costs may exceed $500 million, this facilities sharing may be an attractive means of increasing competition. Further, the benefits of any economies of scale in this arrangement may be passed along to consumers.12/

12/ The Commission has successfully employed multiple licensing concepts in other services, such as air-to-ground radiotelephony. See Amendment of the

[Footnote continued]

The standardized use of CDMA also enhances the possibility of employing the multiple licensing concept. Unlike TDM, CDMA allows multiple uplinks operating simultaneous from any location within a particular satellite's footprint. Consequently, multiple licensees of a satellite could uplink their programming from different locations. 13/ In contrast, each TDM satellite must collect all program material at a single earth station where it is then time-sequenced into a single TDM data stream.

C. Standardizing Transmission Technology Will Provide Significant Consumer Benefits

The Commission should adopt a single CDMA transmission and receiver standard and require that DARS receivers be capable of tuning across the entire DARS allocation (as well as the AM and FM bands). Standardizing CDMA in the band will permit the largest number of competitors, as discussed in Section III.A. The single standard will also create economies of scale for satellite operators who will benefit from more intensive use of available spectrum. With standardization, consumers will be able to access all available programming using a

---

[Footnote continued]

Commission's Rules Relative to the Allocation of the 849-851/894-896 MHz Bands. 5 FCC Rcd 3861 (1990) at ¶¶ 64, 73 (adopting "open-entry sharing" by multiple licensees to promote competition and spectrum efficiency), modified by 6 FCC Rcd 4582 (1991).

13/ And, if a licensee leases capacity to programmers, then each programmer could separately uplink their transmissions to the satellite.

low-cost receiver based on the single standard. If the Commission does not adopt the single standard and instead permits some operators to use TDM, the number of potential licensees and program channels will be limited. Moreover, the consumer will be forced to purchase a more expensive receiver equipped for the multiple standards or decide among the various standards. A single standard will therefore promote the growth of DARS.

Conversely, abdicating responsibility for setting a single standard will impede the future of DARS and restrict competition 14/. No one could credibly assert that AM and FM broadcasting could have achieved its success without standardization. DARS is unlike Personal Communications Services ("PCS"), where the Commission did not prescribe transmission standards, because the PCS consumer normally subscribes only to one operator. By contrast, DARS consumers are likely to subscribe to several, competing services simultaneously. For this reason, it is also important that receivers should be able to pick up any DARS signal.

14/ The Commission is clearly moving in the direction of a single standard for digital television to enhance competition and the service's utility. See Fourth Further Notice of Proposed Rulemaking and Third Notice of Inquiry, Advanced Television Systems and Their Impact Upon Their Existing Broadcast Service, FCC 95-315, MM Docket No. 87-268 (released August 9, 1995). Why should digital radio be any different?

D. Use Of Efficient Technology And Creative Licensing Procedures May Avoid Mutual Exclusivity

As noted above, the use of CDMA will permit the Commission to license a substantial number of operators. In addition, multiple licensing of individual space stations also potentially increases the number of possible licensees. Using these approaches, combined with the adoption of the traditional, strict financial standard for DARS applicants, mutual exclusivity is likely to be avoided.

As the Commission is aware, a demonstration of financial qualification prior to authorization is required in the fixed satellite service. 15/ Applicants are required to demonstrate that they have either sufficient internal funds or outside financial commitments to fund the cost of construction, launch and operation for one year. 16/ They must submit either a current balance sheet showing proof of current assets and operating income or evidence of definitive outside financing sufficient to meet construction, launch and first-year operation expenses. Any financing arrangements contingent on future performance by the applicant or another party do not satisfy the Commission's requirements.

15/ Licensing Space Stations in the Domestic Fixed-Satellite Service, 50 Fed. Reg. 36071 (Sept. 5, 1985).

16/ 47 C.F.R. § 25.140(d).

Applying the strict financial standard to DARS will limit the number of applicants in this very expensive undertaking to those who are truly qualified to participate.

IV. ANCILLARY SERVICES WILL PROVIDE SIGNIFICANT PUBLIC BENEFITS

Cracker Barrel believes that ancillary services, such as data transmission, alphanumeric information or voice mail, should be permitted. 17/ Because all of the possible beneficial uses of DARS have not been defined, the Commission should place no limits on such ancillary services. Moreover, given the potentially large number of data links that can be intermixed with compact disc-quality and other entertainment channels (as discussed in Section III above), the incremental cost of providing ancillary services should be relatively small.

One valuable ancillary service could be the distribution of information about nearby traffic conditions and available restaurants, lodging and other services to vehicles. This potential offering is part of a larger category of features and services in the developing field of Intelligent Transportation Systems ("ITS"), a key aspect of Cracker Barrel's DARS business concept. 18/ The connection between

---

17/ NPRM ¶¶ 29, 30.

18/ ITS would ultimately create an integrated structure of computers, radio communication systems and sensors in vehicles and highways in order to improve highway safety, reduce automobile emissions, promote more efficient energy use and increase productivity. The 1991 Intelligent Vehicle Highway System Act directed our government to begin promoting ITS. The Commission recognized the importance of ITS by establishing the terrestrial Transportation Infrastructure

[Footnote continued]

DARS and ITS-like services was previously noted in this proceeding by General Motors:

> While the public discussion to date on DAR[S] has obviously concentrated on delivery of aural broadcast channels, the digital nature of DAR[S] can, with proper foresight, also be used to meet other information needs of the modern driver. DAR[S] sub-channels will likely prove to be a valuable way to disseminate update information to users of the "Intelligent Vehicle Highway Systems" . . . . For example, a sub-channel on the DAR[S] system could be used to provide Real Time Traffic Information . . . to help alleviate congestion. 19/

Radio in ITS may be used differently at the national, regional and local levels. At the national level, ITS can use position-locating information available from the satellite-based Global Positioning System ("GPS"). 20/ For example, in the TravTek trials, 100 specially-equipped cars used dead reckoning and GPS navigation to determine their positions. 21/

[Footnote continued]

Radio Services ("TRIS") as a new subpart of part 90 of its rules. Report and Order, PR Docket No. 93-61 (released February 6, 1995).

19/ Satellite CD Radio, Inc. Amendment of Application to Reduce Frequencies Required for Broadcasting Satellite (Sound) Service and to Add Generic Mobile Satellite Service Frequencies to Provide Subscription Digital Radio Service, (June 17, 1990) at 4.

20/ Johnson, W.W., Enhancing intelligent transportation with GPS, Satellite Communications, April 1995, at 70.

21/ Krage, M.K., The TravTek driver information system, in Vehicle Navigation and Information Systems Conference Proceedings, 739-748 (Society of Automotive Engineers, 1991).

Vehicle location information can be combined with static map data to give travel directions to the driver. However, much more sophisticated guidance can be provided by combining static map data with updates on travel times or road congestion. Both TravTek and Pathfinder (a trial in southern California) used terrestrial radio to transmit this dynamic information on a regional basis. 22/

Cracker Barrel believes that satellite systems might be used effectively at either the regional or local level for ITS. A single compact disc-quality channel dedicated to ITS could provide essential information to drivers. 23/ In a DARS system using regional spot beams, the data rates from the single compact disc-quality equivalent channel could be increased accordingly.

ITS is only one of several traveler-oriented ancillary services that could be provided with DARS. The Commission should place no restrictions on the ancillary use of satellite DARS so that the public can benefit from its full possibilities.

22/ Sumner, R., Data fusion in Pathfinder and TravTek, in Vehicle Navigation and Information Systems Conference Proceedings, 71-75 (Society of Automotive Engineers, 1991).

23/ This assumes the nominal 128 kbps for a DARS compact disc-quality audio channel (See Section III supra), supporting a data rate of approximately 500 bps to each of the 268 Metropolitan Statistical Areas ("MSAs") within the United States, which is equivalent to a data rate of almost 10 bits per second to each 14,000 interchanges. Metropolitan Statistical Area information from Statistical Abstract of the United States, Table 38 (1993). Interstate Highway System information from the Interstate and Program Support Branch, Federal Highway Administration, U.S. Department of Transportation.

V. SUBSCRIPTION DARS SERVICES ORIENTED TO THE TRAVELING PUBLIC WILL HAVE NO ECONOMIC IMPACT ON LOCAL RADIO

A. Radio Surveys Today Do Not Even Count Long Distance Travelers

Under current market conditions, no radio service is available to long distance motorists that recognizes and addresses their informational or entertainment needs. Services provided by local radio stations are oriented to the needs and interests of their local communities, as required by current licensing standards. Moreover, the advertisers that purchase radio station services are interested in reaching local residents who constitute the economic lifeblood of a given community.

The incumbent stations have no regulatory or economic incentive to address the transient motoring public that may, from time to time, pass through any given radio station's territory.

In keeping with the local programming content appropriate to current license requirements, radio listening audience surveys do not measure the listening habits or interests of long distance motorists passing through a given local economy. The industry standard for such measurement documents listening patterns, whether in homes or in automobiles, for local markets only. 24/ Market study firms

---

24/ See Your Radio Ratings Diary (Mar. 10-16, 1994). Arbitron has been accredited by the Electronic Media Research Council for over 20 years; the EMRC performs annual audits to ensure that Arbitron adheres in practice to its stated procedures. Market survey and analysis firms listed in The Cable and Broadcasting Yearbook, 1995 utilize data from the Arbitron survey or conduct

[Footnote continued]

that survey listeners do not ask about radio listening outside the survey participant's home area. 25/

All radio stations -- commercial, noncommercial and cable --are covered by these listening surveys. Local market reports, developed from data gathered through such surveys, provide consumer demographic detail and consumer media usage information. Radio station ratings are based on these reports. Consequently, none of the current radio listening ratings can reflect any consideration or measurement of the listening patterns of motorists transient through a local community.

Radio advertising time, both local and national, is sold on the basis of these ratings. Because listening patterns of interstate motorists are not surveyed, their needs and interests, as travelers, are not reflected whatsoever in station ratings. This consumer group is, in fact, invisible both to radio broadcasters and to radio advertisers. If the entire long distance motoring public were to subscribe to satellite DARS services, there would be no measured or measurable impact on the

---

[Footnote continued]

similar surveys by telephone designed to determine only local market listening patterns.

25/ Only one survey firm in the nation, Trendata Corporation of Mesa, Arizona, attempts to determine real-time listening patterns in automobiles. Electronic devices are used to monitor traffic thoroughfares. According to a company spokesperson, the company has never participated in a study to measure listening patterns of travelers on interstate highways.

listening ratings nor, consequently, on the advertising revenue streams of local radio stations.

B. DARS Advertising For Travelers Will Be Complementary To, And Not Competitive With, Local Radio Advertising

A primary concern in this proceeding is the potential economic impact of satellite DARS services on the incumbent terrestrial broadcasters. As indicated in paragraph 10 of the NPRM, the Commission has invited comment on the possibility that satellite DARS might diminish the financial ability of some terrestrial stations to provide local service. In this context, the Commission stated that the public interest has two aspects -- "the provision of services of value to the listening public" and "the protection of competition, not competitors."26

Because interstate motorists are transient through local communities and economies, they are, appropriately, of little interest to local commercial entities that purchase radio advertising. Conversely, because of their transient nature, these listeners have little or no interest in local programming and advertisements of the type provided by terrestrial radio stations. Thus, the 82-83% segment of advertising revenues for local radio broadcasters cited by the Commission of the NPRM would likely be unaffected by any advertising that might be sold over a service similar to that proposed by Cracker Barrel. 27/

26/ NPRM ¶ 11.

27/ NPRM ¶ 16.